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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/869,094
Filing Date: September 18, 2001
Appellant(s): MERCURI, GERVASIO

Vincent J. Sunderdick
For Appellant

EXAMINER'S ANSWER

MAILED
JUN 13 2005
GROUP 1700

This is in response to the appeal brief filed March 23, 2005 appealing from the Office action
mailed July, 6, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Independent claim 45 and dependent claims 46, 47, 54-57 and 63-66 are rejected under 35 U.S.C. 102 as anticipated by Levin (U.S. Patent No. 3,866,444). Also, dependent claims 48-52 and 58 are rejected under 35 U.S.C. 103 as being unpatentable over Krauss (U.S. Patent No. 3,248,905) in view of Mercuri (U.S. Patent No. 5,712,007).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 45-47, 54-57 and 63-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Levin (3,866,444).

Levin discloses a tubular casing structure for use with food products (see col. 1, lines 6-14), comprising circumferential threads extending around a periphery of a tubular casing and spaced at intervals along the tubular casing (Fig. 1, #12), the circumferential threads comprising an elastic thread (Fig. 5, #12b) in combination with a yarn (Fig. 5, #12c and 12d) wrapped around and along a length of the elastic thread (see col. 3, lines 21-27), wherein a number of turns of the yarn are inherently provided around the elastic thread for a given length of the circumferential threads are inherently determined as a function of an elastic limit of the elastic thread so that the circumferential threads become taut after a predetermined amount of stretch due to the yarn being straightened to an extent where the yarn resists tensile force whereupon the

circumferential threads become inextensible before the elastic limit of the elastic thread is reached (see col. 3, lines 26-31). Regarding claim 46, note a knitted tube with the circumferential threads attached to the knitted tube (Fig. 1, #10; also see col. 2, lines 38-43). Regarding claim 47, the tubular casing is a tubular net comprising radially spaced longitudinal threads (Fig. 1, #11) in combination with the circumferential threads (Fig. 1, #12) and wherein the circumferential threads comprise a continuous thread extending spirally along said tubular casing (Fig. 1, #12), the longitudinal threads comprise interlocking loop stitches (Fig. 2, #13a, 13b and 13c), each loop stitch extending between the circumferential threads (Fig. 2, #12). Regarding claim 54, note the tubular casing is a knitted tube (Fig. 1, #10) that is stretchable and impermeable to the food products and longitudinal threads (Fig. 1, #11) in combination with the circumferential threads (Fig. 1, #12), the circumferential (Fig. 1, #12) and longitudinal threads (Fig. 1, #11) secured to and spaced, respectively, along and around the knitted tube (Fig. 1, #10), being stretchable after the circumferential threads become taut. Regarding claim 55, the circumferential (Fig. 2, #12) and longitudinal threads (Fig. 2, #13a, 13b and 13c) are secured to the first tubular portion during knitting of the first tubular portion. Regarding claim 56 and 63, the circumferential threads (Fig. 1, #12) are secured to the knitted tube so as to form a continuous spiral along the knitted tube (see col. 2, lines 38-44). Regarding claim 57, 64, 65 and 66, the circumferential (Fig. 1, #12) and longitudinal (Fig. 1, #11) threads are secured to an outer surface of the knitted tube.

Claims 45-47, 54-57 and 63-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Krauss et al. (3,248,905).

Krauss et al. discloses a tubular casing structure for use with food products (see col. 1, lines 28-31), comprising circumferential threads extending around a periphery of a tubular casing

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and spaced at intervals along the tubular casing (Fig. 1, #13), the circumferential threads comprising an elastic thread (Fig. 4, #22) in combination with a yarn (Fig. 4, #28) wrapped around and along a length of the elastic thread (Fig. 4, #22), wherein a number of turns of the yarn (Fig. 4, #28) are inherently provided around the elastic thread (Fig. 4, #22) for a given length of the circumferential threads (see col. 2, lines 1-6; also see Figs. 1 and 4, #13.) are inherently determined as a function of an elastic limit of the elastic thread so that the circumferential threads become taut after a predetermined amount of stretch due to the yarn being straightened to an extent where the yarn resists tensile force whereupon the circumferential threads become inextensible before the elastic limit of the elastic thread is reached. Regarding claim 46, note a knitted tube with the circumferential threads attached to the knitted tube (Fig. 1, #10; also see col. 2, lines 27-30). Regarding claim 47, the tubular casing is a tubular net comprising radially spaced longitudinal threads (Fig. 1, #12) in combination with the circumferential threads (Fig. 1, #13) and wherein the circumferential threads comprise a continuous thread extending spirally along said tubular casing (Fig. 4, #28), the longitudinal threads comprise interlocking loop stitches (Fig. 2, #16, #18 and #20), each loop stitch extending between the circumferential threads (Fig. 2, #13). Regarding claim 54, note the tubular casing is a knitted tube (Fig. 1, #10) that is stretchable and impermeable to the food products and longitudinal threads (Fig. 1, #12) in combination with the circumferential threads (Fig. 1, #13), the circumferential (Fig. 1, #13) and longitudinal threads (Fig. 1, #12) secured to and spaced, respectively, along and around the knitted tube (Fig. 1, #10), being stretchable after the circumferential threads become taut. Regarding claim 55, the circumferential (Fig. 1, #13) and longitudinal threads (Fig. 1, #12) are secured to the first tubular portion during knitting of the

first tubular portion. Regarding claim 56 and 63, the circumferential threads (Fig. 1, #13) are secured to the knitted tube so as to form a continuous spiral along the knitted tube. Regarding claims 57, 64, 65 and 66, the circumferential (Fig. 1, #13) and longitudinal (Fig. 1, #12) threads are secured to an outer surface of the knitted tube.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 48-52 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levin (3,866,444) in view of Mercuri (5,712,007).

Levin discloses the claimed invention as shown above. However, Levin fails to disclose a tubular fibrous casing located within and co-extensive with the tubular net, the fibrous casing comprising an inner liner for the tubular net. Mercuri teaches it is old and well-known in the analogous art to have a tubular fibrous casing located within and co-extensive with a tubular net, the fibrous casing comprising an inner liner for the tubular net (see col. 4, lines 11-20 and 63-65) for the purpose of improving the ease by which the casing can be removed from the meat product after the cooking or curing process. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a tubular fibrous casing located within and co-extensive with the tubular net in Levin as suggested by Mercuri in

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order to improve the ease by which the casing can be removed from the meat product after the cooking or curing process.

Regarding claim 49, the circumferential threads become taut at a diameter which is substantially equal to the diameter of the tubular fibrous casing when it is filled (see col. 3, lines 52-63). Regarding claim 50, the diameter of the tubular fibrous casing is greater than the diameter of the tubular net prior to stretching of the circumferential threads so that the circumferential threads apply compressive force to the fibrous casing as it is being filled (see col. 3, lines 39-50). Regarding claim 51, the diameter of the fibrous casing is between 2 and 4 times greater than the diameter of the tubular net prior to stretching of the circumferential threads (see col. 4, lines 6-10). Regarding claims 52 and 58, the diameter of the tubular net when the circumferential threads become taut is smaller than the diameter of the fibrous casing so that the circumferential and longitudinal threads press inwardly against the fibrous casing (see col. 3, lines 1-9).

Claims 53 and 59-62 rejected under 35 U.S.C. 103(a) as being unpatentable over Levin (3,866,444) in view of Mercuri (5,712,007) and in view of Mintz (5,855,231).

Levin discloses the claimed invention as shown above. However, Levin fails to disclose a tubular fibrous casing located within and co-extensive with the tubular net, the fibrous casing comprising an inner liner for the tubular net. Mercuri teaches it is old and well-known in the analogous art to have a tubular fibrous casing located within and co-extensive with a tubular net, the fibrous casing comprising an inner liner for the tubular net (see col. 4, lines 15-21 and 63-65) for the purpose of improving the ease by which the casing can be removed from the meat product after the cooking or curing process. However, Mercuri fails to disclose the tubular fibrous casing

having at least one pleat. Mintz teaches in the analogous art a fibrous casing having at least one pleat (ripple; see Fig. 7, #44) for the purpose of reducing the width of the fibrous casing in order to fit the fibrous casing within the tubular net. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the tubular knitted structure casing in Levin with a fibrous casing folded flat with at least one pleat as suggested by both Mercuri and Mintz in order to fit the fibrous casing within the tubular knitted structure casing and improve the ease by which the casing can be removed from the meat product after the cooking or curing process.

Claims 48-52 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krauss et al (3,248,905) in view of Mercuri (5,712,007).

Krauss et al. discloses the claimed invention as shown above. However, Krauss et al. fails to disclose a tubular fibrous casing located within and co-extensive with the tubular net, the fibrous casing comprising an inner liner for the tubular net. Mercuri teaches that it is old and well-known in the analogous art to have a tubular fibrous casing located within and co-extensive with a tubular net, the fibrous casing comprising an inner liner for the tubular net (see col. 4, lines 14-21 and 63-65) for the purpose of improving the ease by which the casing can be removed from the meat product after the cooking or curing process. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a tubular fibrous casing located within and co- extensive with the tubular net in Krauss et al as suggested by Mercuri in order to improve the ease by which the casing can be removed from the meat product after the cooking or curing process.

Regarding claim 49, the circumferential threads become taut at a diameter which is substantially equal to the diameter of the tubular fibrous casing when it is filled (see col. 3, lines 52-63). Regarding claim 50, the diameter of the tubular fibrous casing is greater than the diameter of the tubular net prior to stretching of the circumferential threads so that the circumferential threads apply compressive force to the fibrous casing as it is being filled (see col. 3, lines 39-50). Regarding claim 51, the diameter of the fibrous casing is between 2 and 4 times greater than the diameter of the tubular net prior to stretching of the circumferential threads (see col. 4, lines 6-10). Regarding claims 52 and 58, the diameter of the tubular net when the circumferential threads become taut is smaller than the diameter of the fibrous casing so that the circumferential and longitudinal threads press inwardly against the fibrous casing (see col. 3, lines 1-9).

Claims 53 and 59-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krauss et al. (3,248,905) in view of Mercuri (5,712,007) and in view of Mintz (5,855,231).

Krauss et al. discloses the claimed invention as shown above. However, Krauss et al fails to disclose a tubular fibrous casing located within and co-extensive with the tubular net, the fibrous casing comprising an inner liner for the tubular net. Mercuri teaches it is old and well-known in the analogous art to have a tubular fibrous casing located within and co-extensive with a tubular net, the fibrous casing comprising an inner liner for the tubular net (see col. 4, lines 63-65) for the purpose of improving the ease by which the casing can be removed from the meat product after the cooking or curing process. However, Mercuri fails to disclose the tubular fibrous casing having at least one pleat. Mintz teaches in the analogous art a fibrous casing having at least one pleat (ripple; see Fig. 7, #44) for the purpose of reducing the width in order to

fit the fibrous casing within the tubular net. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the tubular knitted structure casing in Krauss et al. with a fibrous casing folded flat with at least one pleat as suggested by both Mercuri and Mintz in order to fit the fibrous casing within the tubular knitted structure casing and improve the ease by which the casing can be removed from the meat product after the cooking or curing process.

(10) Response to Argument

Rejection of claims 45-47, 54-57 and 63-66 under 35 U.S.C. 102 as anticipated by Levin (U.S. Patent No. 3,866,444)

Appellants argue that "there is no indication in Levin concerning a limit on the number of turns of yarn for a given length of elastic thread. The specification of Levin particularly states that when extended, the diameter of the rubber decreases and the covered strands become spaced apart. There is no indication that the stretching limit results from the outer threads being placed in tension. Instead, the stretching limit of the elastic thread itself is what determines the limit of the stretch in Levin. The yarn wrapping of Levin will accommodate any stretch which is allowed by the elastic thread and not by any tension on the outer threads." Appellants further argue that "the further limiting feature of independent claim 45 that the thread becomes "inextensible before the elastic limit of the elastic thread is reached" still further defines over the reference to Levin."

Levin clearly teaches an elastic thread (Fig. 5, element 12b) in combination with a yarn wrapped around and along a length of the elastic thread (Fig. 5, elements 12c and 12d). In

column 3, lines 22-27, Levin teaches the yarns (12c and 12d) being spirally wound about the elastic core (12b) in opposite directions. Therefore, the yarns in Levin are being wrapped around the elastic core for a given length and inherently a certain number of turns of the yarn will be provided along the elastic core for a given length depending on the length of the elastic core. Also, it is well-known in the art that an elastic thread inherently has an elastic limit, so the elastic thread in Levin has an elastic limit and it is inherent that the number of turns of yarn provided around the elastic thread for a given length of the circumferential thread is determined as a function of an elastic limit of the elastic thread.

Rejection of claims 45-47, 54-57 and 63-66 under 35 U.S.C. 102 as anticipated by Krauss et al. (U.S. Patent No. 3,248,905)

Appellants argue that “there is no showing of a relationship between the number of turns and the elastic limit of the elastic thread. Furthermore, there is no indication that the thread becomes taut after a predetermined amount of stretch so that the circumferential thread becomes “inextensible before the elastic limit of the elastic thread is reached”.”

Krauss et al. clearly teaches an elastic thread (Fig. 4, element 22) in combination with a yarn wrapped around and along a length of the elastic thread (Fig. 4, elements 28 and 30). In Figure 4 of Krauss et al., it is clearly being shown that the yarns are being wrapped around the elastic thread for a given length. Therefore, the yarns in Krauss et al. are being wrapped around the elastic core for a given length and inherently a certain number of turns of the yarn will be provided along the elastic core for a given length depending on the length of the elastic core. Also, it is known in the art that an elastic thread inherently has an elastic limit, so the elastic

thread in Krauss et al. has an elastic limit and it is inherent that the number of turns of yarn provided around the elastic thread for a given length of the circumferential thread is determined as a function of an elastic limit of the elastic thread.

Rejection of claims 48-52 and 58 under 35 U.S.C. 103 over Levin or Krauss et al. in view of Mercuri (U.S. Patent No. 5,712,007)

Appellants argue that “The reference to Mercuri ‘007 is concerned with an elastic circumferential thread which can be a combination of a non-extendible thread and an elastic thread but there is no disclosure of yarn wrapped around or along the length of the thread even if combined with Levin or Krauss.”

However, as pointed out previously both Krauss and Levin each teach the circumferential threads comprising an elastic thread in combination with a yarn wrapped around and along the length of the elastic thread as claimed in independent claim 45. Mercuri was merely cited for suggesting that it is old and well-known in the art to have a have a tubular fibrous casing located within and co-extensive with a tubular net, the fibrous casing comprising an inner liner for the tubular net (see col. 4, lines 14-21 and 63-65) for the purpose of improving the ease by which the casing can be removed from the meat product after the cooking or curing process and it would have been obvious to one of ordinary skill in the art at the time the applicant’s invention was made to have provided a tubular fibrous casing located within and co- extensive with the tubular net in either Levin or Krauss et al as suggested by Mercuri in order to improve the ease by which the casing can be removed from the meat product after the cooking or curing process.

Rejection of claims 53 and 59-62 under 35 U.S.C. 103 over Levin or Krauss et al. in view of Mercuri and in view of Mintz (U.S. Patent No. 5,855,231)

Appellants argue that “The reference to Mintz ‘231 uses an elasticized or non-elasticized yarn with a non-elasticized yarn including synthetic thread which has no stretch capability. The only stretching available to any knitted product in Mintz is due to the stretchability of the resultant product. There is no disclosure in Mintz of the yarn wrapped around an elastic thread and there is only a reference to either a single strand of rubber which can be knit into a structure or a single strand of rubber wrapped around two opposing wound threads. The rate of wrapping is such that the elasticity is not limited by the outer wrapping.”

However, as pointed out previously both Krauss and Levin each teach an elastic thread in combination with a yarn wrapped around and along the length of the elastic thread as claimed in independent claim 45. Mercuri was merely cited for suggesting that it is old and well-known in the art to have a tubular fibrous casing located within and co-extensive with a tubular net, the fibrous casing comprising an inner liner for the tubular net (see col. 4, lines 14-21 and 63-65) for the purpose of improving the ease by which the casing can be removed from the meat product after the cooking or curing process and Mintz was merely cited for suggesting that it is old and well-known in the art to have a fibrous casing having at least one pleat (ripple) for the purpose of reducing the width in order to fit the fibrous casing within the tubular net. It would have been obvious to one of ordinary skill in the art at the time the applicant’s invention was made to have provided the tubular knitted casing in either Krauss et al. or Levin with a fibrous casing folded flat with at least one pleat as suggested by both Mercuri and Mintz in order

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to fit the fibrous casing within the tubular knitted structure casing and improve the ease by which the casing can be removed from the meat product after the cooking or curing process.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,



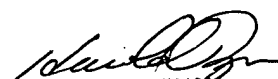
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June 7, 2005

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1772